

Burt County Board Minutes



OFFICE OF THE BURT COUNTY CLERK
December 8, 2014
TEKAMAH NE 68061

The Burt County Board of Supervisors met this date pursuant to adjournment of their last meeting with the following members present: Cliff Morrow, Gerald Newill, Ted Connealy, Perry Rogers, Matt Connealy, Greg Brummond and Dave Schold.

The meeting opened at 9:00 A.M. upon motion by Rogers, seconded by Newill, with roll call vote as follows: Ayes – Morrow, Newill, T. Connealy, Rogers, M. Connealy, Brummond and Schold. Nays – none. Chairman Morrow informed the public that the Nebraska Open Meetings Act was posted on the wall.

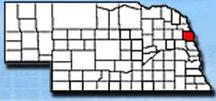
Upon motion by M. Connealy, seconded by Brummond, the agenda was approved, with roll call vote as follows: Ayes – Morrow, Newill, T. Connealy, Rogers, M. Connealy, Brummond and Schold. Nays – none.

The County Clerk Report of Fees, the County Court Report of Fines, the District Court Fee Report and the Zoning Report for November were approved upon motion by Schold, seconded by Rogers, with roll call vote as follows: Ayes – Morrow, Newill, T. Connealy, Rogers, M. Connealy, Brummond and Schold. Nays – none.

The minutes of the last meeting were approved upon motion by Rogers, seconded by Schold, with roll call vote as follows: Morrow, Newill, T. Connealy, Rogers, M. Connealy, Brummond and Schold. Nays – none.

The Miscellaneous Receipts in the amount of \$115,744.50 and fund balances were approved upon motion by Newill, seconded by Schold, with roll call vote as follows: Ayes – Morrow, Newill, T. Connealy, Rogers, M. Connealy, Brummond and Schold. Nays – none.

ZONING PERMITS	570.00
CO CLERK-FILING & RECORDING FEES	2,667.50
CO CLERK-DOC STAMPS (COUNTY SHARE)	969.90
CO CLERK-MISC FEES	169.25
DISTRICT COURT-FILING FEES	50.00
DISTRICT COURT-COURT COST REFUNDS	152.50
DISTRICT COURT- MISC FEES & REVENUE	252.74
DIST COURT-FEES & COSTS	10.00
CO COURT-MISC FEES	493.40
CO ATTY-CHECK COLLECTION	110.00
OVERLOAD FINES-25% COUNTY SHARE	368.75
INTEREST ON INVESTMENTS	207.96
MISC REVENUE	678.52
HIGHWAY/STREET ALLOCATION	82,101.76
ROAD DEPT-SALE OF MATERIALS	200.00
ROAD-MISC REVENUE	259.00



Burt County Board Minutes



CO CLERK-PRESERVATION & MODERNIZATION	467.00
STOP PROGRAM	200.00
INHERITANCE TAX	8,447.51
911 WIRELESS SERVICE FUND	4,771.30
COUNTY 911 SURCHARGE	1,352.00
OVERLOAD FINES-75% STATE SHARE	1,106.25
COUNTY COURT FINES-REGULAR	5,609.50
DECATUR FIRE GENERAL	269.49
FIRE DISTRICT MONEY FROM ADJ COUNTIES	63.51
DECATUR FIRE BOND	125.12
LYONS FIRE DISTRICT MONEY FROM ADJ COUNTIES	14.45
LYONS CITY COURT FEES	30.00
IN LIEU HOUSING AUTHORITY	4,027.09

Letter from Nebraska Loess Hills, including their 2014 Annual Report, was noted and placed on file.

M. Connealy moved to appoint Marty Nelson to the Burt County Board of Adjustments, and Newill seconded the motion, with roll call vote as follows: Ayes – Morrow, Newill, T. Connealy, Rogers, M. Connealy, Brummond and Schold. Nays – none.

Motion was made by Newill, seconded by T. Connealy, to reappoint Dave Schold to the Northeast Nebraska Area Agency on Aging Board for a three-year term, with roll call vote as follows: Ayes – Morrow, Newill, T. Connealy, Rogers, M. Connealy, Brummond and Schold. Nays – none.

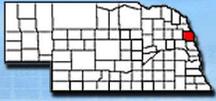
Rogers reported that he, Brummond and Schold attended a meeting with a representative from Norfolk with the Nebraska Department of Roads present, where they discussed whose responsibility it was to repair intersections on county roads. Discussion followed regarding this topic as well as cleaning road ditches.

Highway Superintendent Smith reported that rock bought from Martin Marietta was going up 60 cents per ton.

At 10:05 A.M. the meeting was adjourned until 1:00 P.M. for the Public Hearing in the District Courtroom for S.T.T.L. Farms L.L.C.

The Burt County Board of Supervisors reconvened at 1:00 P.M. in the District Courtroom on the third floor of the Burt County Courthouse. Chairman Morrow informed the public that the Open Meeting Act was posted on the wall.

Chairman Morrow opened the meeting at 1:09 P.M. Laura Krebsbach, Regional Paralegal Representative for the Socially Responsible Agricultural Project, residing at 105 C St, Ulysses, Nebraska, presented procedural objections regarding the permit application process as well as the published notice of the hearing and the meeting agenda, stating that they did not include mention of the Conditional Use Permit, and that both notices were too vague. David Drew, representing Burt County in this matter, requested that she list the



Burt County Board Minutes



documents that she handed out before the hearing. Krebsbach presented Exhibit A to the Board.

Jerry Slusky of Smith, Gardner, Slusky, Lazer, Pohren & Rogers, 8712 West Dodge Road, Suite 400, Omaha, NE 68114, representing Ivan Marr in his lawsuit against Burt County, asked the Board not to approve S.T.T.L. Farms L.L.C.'s permit because of procedural matters regarding Burt County's zoning regulations and improper application processes.

Motion was made by M. Connealy, seconded by Schold to go into Executive Session at 1:15 P.M. to discuss with counsel the objections presented by Laura Krebsbach and Jerry Slusky, with roll call votes as follows: Matt Connealy – yes, Greg Brummond – yes, Dave Schold – yes, Gerald Newill – yes, Ted Connealy – yes, Perry Rogers – yes, Cliff Morrow – yes. Motion carried.

The Board came out of Executive Session at 1:25 and went back into Regular Session. Chairman Morrow stated that there was no action taken and no votes taken during the Executive Session.

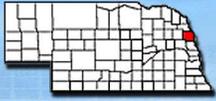
Motion was made by Newill, seconded by Schold, to move forward with the Public Hearing as the notices did sufficiently describe the matter to be discussed at the Hearing. Roll call vote was as follows: Greg Brummond – yes, Dave Schold – yes, Gerald Newill – yes, Ted Connealy – yes, Perry Rogers – yes, Matt Connealy – yes, Cliff Morrow – yes. Motion carried.

Motion was made by Schold, seconded by T. Connealy to open the Public Hearing at 1:27 P.M., with roll call vote as follows: Dave Schold – yes; Gerald Newill – yes, Ted Connealy – yes, Perry Rogers – yes, Matt Connealy – yes, Greg Brummond – yes, Cliff Morrow – yes. Motion carried.

Chairman Morrow stated that the purpose of the Public Hearing is to give the Burt County Board of Supervisors information pertaining to S.T.T.L. Farms LLC, who applied for the Conditional Use Permit, and that they would hear from S.T.T.L. Farms LLC representatives first, followed by public comment for and against the hog confinement.

Steven D. Mossman of Mattson, Ricketts, Davies, Stewart & Calkins, 134 South 13th St, Suite 1200, Lincoln, Nebraska 68508, representing S.T.T.L. Farms LLC handed out packets of exhibits containing applications, permits issued, as well as exhibits addressing odor and ground water concerns. He then introduced Tavis Christiansen, 1698 County Road 6, Lyons, Nebraska, and Scott Ronnfeldt, 205 County Road Q, Lyons, Nebraska, to give a background of the proposal. They explained the different systems which would control the air quality inside, minimize odor outside, dispose of mortalities, and the disposal of waste by injecting it into farm ground. Mossman presented Exhibit B (consisting of 16 sub-exhibits) and Exhibit D.

Andy Scholting from Nutrient Advising LLC answered questions from the Board regarding DEQ requirements. He stated that S.T.T.L. Farms LLC are meeting all of the



Burt County Board Minutes



DEQ requirements, and that DEQ does not require all of the technology that S.T.T.L. Farms is currently using and that they are being very proactive. Scholting presented Exhibit C to the Board.

S.T.T.L. Farms LLC chose their site because of the bio security issue – it is isolated with no livestock in the area. It is farthest from the four towns in Burt County, and they want to benefit Burt County by adding to the tax base and bringing in jobs.

They stated that they had talked to Joni Renshaw, Burt County Assessor, and Burt County does not devalue property near livestock facilities, so there is no resulting loss of tax base.

They realize that some odor is inevitable; however, it is their highest priority. They have closed lagoons to eliminate odor, and that has been very successful. An EPI air system is a requirement on their Conditional Use Permit, which will reduce dust by 40 to 60 percent and odor by 30 per cent.

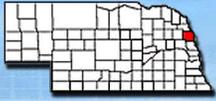
Even though DEQ does not require injection, S.T.T.L. Farms uses injection. They asked if Burt County might consider changing their Conditional Use Permit to allow surface application in the case of an emergency when there wasn't time between harvest and frost in the ground to inject the manure. They stated that they have never had to surface apply in the past.

They will sink two irrigation well casings and will use less water in a year than a pivot uses in 3 days, so water usage should not be a problem.

Andy Scholting with Nutrient Advising LLC out of West Point spoke about compliance, record-keeping and manure management. The DEQ was satisfied and issued a permit November 3, 2014. His job will be to work with S.T.T.L. Farms to make certain they are in compliance with the permit requirements and to assist in record keeping and ongoing nutrient management and waste disposal. Several neighbors have agreed to utilize the manure, and he will be taking soil samples.

He also explained odor footprint maps of the proposed facilities as well as the existing facilities and the impact on setback areas. He then addressed concerns regarding ground water and the research that he did regarding wells in the area, and there should be no impact on any wells. The DEQ is not concerned about wells and didn't even require ground water monitoring.

Stephen Mossman, counsel for S.T.T.L. Farms, addressed the issue of the Ivan Marr property on which there is a barn that he is claiming as his residence within the setback. Mr. Mossman presented several exhibits, among them the application for a zoning permit by Mr. Marr on September 11, 2014, in which he states that he is making a barn a house. Mr. Mossman pointed out that this was requested nearly a month after S.T.T.L. Farms LLC filled out an application on August 15, 2014, for a Conditional Use Permit. He stated that the foundation and roof of the barn do not meet the requirements of a residence, and at the



Burt County Board Minutes



time that S.T.T.L. Farms applied for their permit Mr. Marr had no zoning permit or certificate of occupancy so could not be considered a legal resident of the property.

Chairman Morrow then opened the hearing up for public comment, both for and against.

Laura Krebsbach, Socially Responsible Agriculture, then spoke, quoting Burt County's zoning regulations and procedures for obtaining a zoning permit. She stated that a Conditional Use Permit is not a Building Permit and that S.T.T.L. Farms does not have a Building Permit and, therefore, "a place in line". She stated that there was someone who has a "place in line". Justin Jensen, she stated, is the son of Vic Jensen, and has a valid building permit and construction contract and plan for a home, and that construction has begun with scraping and staking. Krebsbach presented Exhibit E to the Board.

David Drew then asked her if she said that S.T.T.L. Farms LLC does not have a building permit. Ms. Krebsbach then replied that they do not have a building permit because they cannot get a building permit until they receive their conditional use permit. When asked by Brummond what she was saying, she replied that you cannot give them a building permit until there is a Conditional Use Permit, and you cannot give them a Conditional Use Permit because there is a valid Building Permit issued to Justin Jensen.

Gordie Whitcomb, 1481 County Road 29, Tekamah, Nebraska, then spoke in opposition to the facility. His main concern was pollution due to the manure.

Terry Lynn Arthur, 2380 County Road O, was also opposed to the facility. Her main concern was odor and her concern that it would lower her property value.

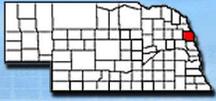
Laura Krebsbach then spoke about two legal cases regarding home values near livestock facilities.

Chuck Meyers, 1190 County Road U, Lyons, Nebraska, spoke in favor of the facility, stating that he had been a neighbor of S.T.T.L.'s current facility and there was seldom an odor issue. He noted that livestock is very important to Burt County and that much of the soy beans raised here are fed to livestock.

Bill Climer, 445 So 1st St, Lyons, Nebraska, was opposed to the facility, stating that water issues are very important. He voiced his concern about his spring-fed well and was afraid that the facility could eventually affect it. He was also concerned about the amount of water the facility would be using.

Jeff Anderson, 1721 County Road 23, was opposed to the facility, stating his concern about odor, real estate values and ground water if a pit would crack.

Victor Jensen, 1622 County Road 27, Tekamah, Nebraska, was opposed to the facility and claimed that Ivan Marr has been living in the barn in question. Vic's concerns included: requirements for a cleanup bond and useage bond, wells, odor in the setback area, groundwater, heavy metal residue, the park on his property that is grandfathered in,



Burt County Board Minutes



the fact that S.T.T.L. Farms did not own the property the conditional use permit is for, their disposal system, water quality, and Silvercreek Township roads. Jensen presented Exhibit F, which consisted of two outlines of points, with supporting argument. Exhibit G, which consisted of deeds was also presented to the Board.

Mark Niewohner, 1630 County Road 6, Lyons, Nebraska, and John Niewohner, 1555 County Road 6, Lyons, Nebraska, are neighbors of S.T.T.L. Farms' current facilities and support the new facility. They stated that there was no odor problem, nor have they had any well problems. The Niewohners stated that S.T.T.L. Farms were good neighbors who knifed the manure in to prevent odor and they had not seen any spillage.

Nick Stefero, 3089 County Road K, Tekamah, Nebraska, spoke against the facility, mentioning the odor footprint, the air system for the gestation building and the placement of septic systems.

Dan Norton, 2290 County Road R, Lyons, Nebraska, was opposed to the facility, mentioning his concern about odor in what he thought was a similar hog confinement in South Dakota.

Sean Connealy, 2725 Old Hwy 118, Decatur, Nebraska, spoke against the facility. He did not think the lot split met the requirements.

Jerry Slusky, counsel for Ivan Marr, requested that the Board not vote today, stating that he would like to see S.T.T.L. Farms present more information to the Board and that they wait to vote until they receive the additional information. Mr. Slusky presented Exhibits H (Citizen Petition), I (Affidavit of Ivan Marr), J (Statements of People indicating that Marr resides at the building), and K (Letter from Slusky to the Board) to the Board,

Steven D. Mossman, representing S.T.T.L. Farms LLC, asked the Board to approve the application as a way of protecting ag use in Burt County. He also asked that they throw out the application by Justin Jensen, Vic Jensen's son, that was made after the application for a conditional use permit by S.T.T.L. Farms. He further pointed out that Laura Krebsbach was not an attorney.

Laura Krebsbach, representative for Socially Responsible Agricultural Project, then defended her qualifications, stating that she had worked with zoning for many years.

Gage Beza, 2069 So 11th St, Sioux City, Iowa, is an employee of S.T.T.L. Farms who recently moved. He did, however, live near the hog confinement. He stated that the only time there was any odor was when they knifed the waste into the field next to his house, which was two days in three years that he lived there.

Motion was made by Newill, seconded by Schold to close the Hearing at 4:42 P.M. and go back into regular session, with roll call vote as follows: Gerald Newill – yes, Ted Connealy – yes, Perry Rogers – yes, Matt Connealy – yes, Greg Brummond – yes, Dave Schold – yes, Cliff Morrow – yes. Motion carried.

